

Federal Communications Commission

DA 04-137

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 03-8
Table of Allotments,) RM-10625
FM Broadcast Stations.)
(Saluda and Irmo, South Carolina))

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: January 28, 2004

Released: January 30, 2004

By the Assistant Chief, Audio Division:

1. The Audio Division has before it the *Notice of Proposed Rule Making* ("Notice")¹ issued in response to a petition for rule making filed by Breckinridge Communications, LLC ("Petitioner"), licensee of Station WJES-FM, Channel 221A, Saluda, South Carolina. Petitioner seeks to upgrade its station from Channel 221A to 221C3, to reallocate Channel 221C3 from Saluda to Irmo, South Carolina, and to modify the authorization of Station WJES-FM accordingly. These changes would provide Irmo with its first local aural transmission service. Petitioner filed comments reaffirming its proposal and reiterating its intent to implement its proposal if the Commission upgrades Channel 221A to Channel 221C3 and reallocates Channel 221C3 to Irmo. Glory Communications, Inc. ("Glory") filed comments in opposition to Petitioner's proposal and Petitioner filed reply comments to Glory's comments. For the reasons stated below, we grant Petitioner's requests to upgrade its channel to Channel 221C3 and to change its community of license to Irmo.

2. Petitioner submitted its petition pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation would result in a preferential arrangement of allotments. We make this determination using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.³

3. Since Irmo is located within the Columbia Urbanized Area, Petitioner was required to demonstrate that Irmo is sufficiently independent of the urbanized area that the Commission could

¹ *Saluda and Irmo, South Carolina*, 18 FCC Rcd 114 (MB 2003).

² See *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community").

³ 90 FCC 2d 88 (1982). The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. Equal weight is given to priorities (2) and (3).

award Irmo a first local service preference under priority (3) of the FM allotment priorities.⁴ Under *Tuck*, we examine such proposals by considering three criteria: (1) the signal population coverage, (2) the size and proximity of the proposed community to the central city of the urbanized area, and (3) the interdependence of the proposed community to the urbanized area.⁵ The interdependence factor is the most important criteria considered in making an allotment decision involving the proposed reallocation of a station to an urbanized area. Under criterion (1), Petitioner states that its proposed 70 dBu contour would encompass only 35 percent of the Columbia, South Carolina Urbanized Area. The Commission has approved reallocation proposals involving substantially greater 70 dBu coverage of a nearby urbanized area.⁶ With respect to criterion (2), Irmo is located about 10 miles west of the community reference point for Columbia. Irmo's population (11,039) is 9.5 percent of the population of the Columbia (116,278), which is the central city of the Columbia Urbanized Area. This percentage is larger than that approved in other cases.⁷ Thus, no adverse conclusions can be drawn against Petitioner under (1) and (2).

4. Under criterion (3), which measures the relative independence of the suburban community (Irmo) from the Columbia Urbanized Area, a clear majority of the eight *Tuck* factors demonstrate Irmo's independence from Columbia. With respect to *Tuck* factor 1, the extent to which community residents work in the larger metropolitan area, rather than the specified community, Petitioner notes that Irmo has abundant employment opportunities, including a large number and wide variety of businesses located in Irmo. One of the major employers is a large fiber plant operated by Honeywell, which employs more than 1,400 persons. According to the 2000 U.S. Census, of the 6,038 employed Irmo residents age 16 years and over, 2,595 residents work in Columbia and 678 residents work in Irmo. Thus, about 11 percent of Irmo's labor force works in Irmo. Although a small percentage of local labor force members works in Irmo, the number is significant and would not justify an

⁴ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("Tuck"). See also *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951).

⁵ In *Tuck*, the Commission set forth eight factors in assessing the independence of a specified community: (1) the extent to which community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own weekly newspaper or other media that cover the community's local needs and interests; (3) whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facility and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries. 3 FCC Rcd at 5378. The Commission has considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. See *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (M.M.Bur. 1996).

⁶ See, e.g., *Mullins and Briarcliffe Acres, South Carolina*, 14 FCC Rcd 10516 (MMB 1999) (67 percent of urbanized area covered by 70 dBu contour).

⁷ See, e.g., *Chillicothe and Ashville, Ohio*, 18 FCC Rcd 22410 (MB 2003) (smaller community had less than 1 percent of the central city's population).

unfavorable finding under *Tuck* factor 1.⁸ Under *Tuck* factor 2, whether the smaller community has its own newspaper or other media that covers the community's needs and interests, Irmo has its own weekly newspaper, The New Irmo News and also has several internet sites, including sites operated by the Greater Irmo Chamber of Commerce and the Irmo municipal government. The New Irmo News also publishes The Lake Murray News, which has news of the Lake Murray area and advertising for businesses in Irmo and nearby small communities. Thus, Petitioner deserves a favorable finding under *Tuck* factor 2.

5. Evidence proffered pursuant to *Tuck* factor 3, whether the smaller community's leaders and residents perceive Irmo as being separate from the Columbia Urbanized area, and *Tuck* factor 4, whether the smaller community has its own local government government and local officials, clearly supports favorable findings for Irmo concerning these factors. Thus, the Town of Irmo was chartered in 1890 and has a long-established identity separate from that of Columbia. In addition Irmo has its own local government including a 5-member town council, which includes a mayor and four council members, and several other town officials. Under *Tuck* factor five, Irmo earns a favorable finding because it has its own zip code. Under *Tuck* factor 6, Irmo has numerous commercial establishments and other facilities, including many businesses that use "Irmo" in their names. Medical offices, dentists' offices and an out-patient surgical center are also located in Irmo. Thus, Irmo receives a favorable finding under *Tuck* factor 6. Insofar as *Tuck* factor 7 is concerned, Irmo earns an affirmative finding because advertisers can direct their advertising to Irmo residents through The New Irmo News and The Lake Murray News as well as various commercial websites. Lastly, under *Tuck* factor 8, Irmo does provide some municipal services to its residents. It has its own Police Department with 18 personnel. Fire protection is provided by the Irmo Fire District, which uses a professional staff as well as volunteers. Nevertheless, the fact that Irmo's local schools and library are provided by county governments⁹ does indicate that Irmo is somewhat dependent upon the Columbia Urbanized Area. Thus, we believe that Irmo should receive neither an affirmative nor a negative finding under *Tuck* factor 8. Thus, under all factors except *Tuck* factors 1 and 8, Petitioner clearly deserves favorable findings. In conclusion, the reallocation of Channel 221C3 from Saluda to Irmo is not prohibited by *Tuck*.

6. Glory argues generally that the proposal to reallocate Station WJES-FM from Saluda, (which Glory describes as a rural community 45 miles west of Columbia) to Irmo, which is located about 10 miles west of Columbia, should be rejected as being contrary to the Commission's policies under Section 307(b) of the Communications Act of 1934, as amended. Glory observes that the Commission stated in *Change of Community* that it would carefully monitor any proposal which would result in reallocating a channel from an underserved rural area to a well-served urban area and would look behind claims of a first local service in a metro or urbanized area.¹⁰ Glory's opposition pleading focuses on the fact that after Station WJES-FM is relocated to Irmo, the only remaining

⁸ The Commission has found that 16 percent of a community's workforce employed in the community is sufficient to support a favorable finding under *Tuck* factor 1. See *Anniston and Ashland, Alabama, and College Park, Georgia, et al.*, 16 FCC Rcd 3411 (MMB 2001).

⁹ Both Irmo and Columbia are included in Lexington and Richland Counties.

¹⁰ Glory cites *Change of Community*, 4 FCC Rcd at 4873, para.27 and 5 FCC Rcd at 7096, paras. 12-14.

Saluda station would be Station WJES(AM), a 350 watt daytime only station. Glory observes that, in the situation presented by the facts in this case, the Commission has held that the loss of the only full-time local service to a community must be considered under priority 4 of the FM allotment priorities.¹¹

7. We have already concluded that the reallocation of Channel 221C3 from Saluda to Irmo, South Carolina, should be treated as creating a first local service. We find no merit to Glory's argument that Petitioner should be denied a first local service preference pursuant to the Commission's FM allotment priorities because Petitioner's proposal to relocate Station WJES-FM from Saluda to Irmo will result in the loss of Saluda's only aural nighttime local service. In the *LaGrange* case cited by Glory, a licensee sought to reallocate the channel used by Station KBUK(FM) from LaGrange, Texas to Rollingwood, Texas, and to upgrade the channel from Class A to Class C2. LaGrange would retain a daytime only AM station. The licensee's reallocation proposal would result in providing a second local service to Rollingwood, which already had a fulltime AM station licensed to it. In addition, the Commission concluded that, in *LaGrange*, reallocating a channel from LaGrange to Rollingwood would actually be allotting another aural service to the Austin Urbanized Area at the expense of the only FM station licensed to LaGrange. In light of all the facts in *LaGrange*, the Commission denied the reallocation proposal. Nevertheless, *LaGrange* noted that, for purposes of determining sole local transmission service, a daytime only AM station would be considered to be such a service.¹² In conclusion, Petitioner's proposal to upgrade its station from Channel 221A to Channel 221C3 and to reallocate Channel 221C3 from Saluda to Irmo is entitled to a first local service preference pursuant to the FM allotment priorities.

8. We believe that the public interest would be served by upgrading Station WJES-FM's Channel 221A to Channel 221C3 and reallocating Channel 221C3 from Saluda to Irmo, South Carolina, because Irmo would receive its first local aural transmission service. The reallocation of Channel 221C3 to Irmo would not deprive Saluda of its sole local aural transmission outlet because Saluda would continue to be served by AM Station WJES. As we stated in the *Notice*, Petitioner submitted a preclusion study demonstrating that upgrading Station WJES-FM from Channel 221A to 221C3 and reallocating the station to Irmo, South Carolina, would not preclude the establishment of any new or upgraded noncommercial education station on Channels 218, 219, or 220.¹³ Further, Petitioner's reallocation proposal would result in a net gain in population of 441,703 people and a net gain in area of 2,963 square kilometers. The loss area would be completely covered by at least five other full-time services and thus would be well served. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the license of Station WJES-FM to specify operation on Channel 221C3 at Irmo, South Carolina.

¹¹ For this proposition, Glory cites *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337, 3338 (1995) ("*LaGrange*").

¹² *LaGrange*, 10 FCC Rcd at 3338, citing *Change of Community*, 5 FCC Rcd at 7097; see also *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352, 10355 at para. 16 (MMB 1995); *Genesco, Illinois and DeWitt, Iowa*, 12 FCC Rcd 19477, 19478 (MMB 1997); and *Willows and Dunnigan, California*, 15 FCC Rcd 23852 (MMB 2000).

¹³ In fact, any new or upgraded stations on those channels are already precluded by other existing FM authorizations.

9. Channel 221C3 can be allotted to Irmo, South Carolina, in conformity with the technical requirements of the Commission's Rules, utilizing Petitioner's requested site at the coordinates of 34-09-00 North Latitude and 81-13-00 West Longitude, with a site restriction of 7.8 kilometers (4.9 miles) northwest of Irmo, South Carolina.

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 15, 2004, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Saluda, South Carolina	_____
Irmo, South Carolina	221C3

11. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Breckinridge Communications, LLC., for Station WJES-FM, Saluda, South Carolina, IS MODIFIED to specify operation on Channel 221C3 at Irmo, South Carolina, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules, unless the proposed facilities are categorically excluded from environmental processing.

12. Pursuant to Commission Rule Section 1.1104(3)(l), any party seeking a change of community of license of an FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Breckinridge Communications, LLC, licensee of Station WJES-FM, is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license.

13. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

14. For further information concerning the above, contact R. Barthen Gorman, Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau